

REFERENCE TITLE: enterprise zone credits; qualifying employees

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

## HB 2243

Introduced by  
Representative Tobin

AN ACT

AMENDING SECTIONS 41-1525, 43-1074 AND 43-1161, ARIZONA REVISED STATUTES;  
RELATING TO ENTERPRISE ZONES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1525, Arizona Revised Statutes, is amended to  
3 read:

4 41-1525. Tax incentives: definitions

5 A. The owner of a business or an insurer located in an enterprise zone  
6 before July 1, 2011 is eligible for an income tax credit under section  
7 43-1074 or 43-1161 or a premium tax credit under section 20-224.03 for net  
8 increases in qualified employment positions, except employment positions at a  
9 zone location where more than ten per cent of the business conducted at the  
10 location consists of retail sales of tangible personal property, measured  
11 either by the number of employees assigned to retail sales or the square  
12 footage of the facility used for retail sales activities at the location in  
13 the zone. Retail sales and retail sales activities do not include:

14 1. Food and beverage for consumption on the premises solely by  
15 employees and occasional guests of employees at the location.

16 2. Promotional products not available for sale and displaying the  
17 company logo or trademark.

18 3. Products sold to company employees.

19 B. To qualify for a tax credit, the owner must:

20 1. Certify to the department of revenue or the department of  
21 insurance, as applicable, on or before the due date of the tax return,  
22 including any extensions for the year for which the credit is claimed, in a  
23 form prescribed by the department of revenue including electronic media,  
24 information that the department of revenue may require, including the  
25 ownership interests of co-owners of the business if the business is a  
26 partnership, limited liability company or an S corporation, and the following  
27 information for each employee in the zone location:

28 (a) The date of initial employment.

29 (b) The number of hours worked during the year.

30 (c) Whether the position was full-time.

31 (d) The residence of the employee.

32 (e) Whether the residence was in or outside the zone.

33 (f) If the residence was in the zone, where in the zone it is located.

34 (g) The employee's annual compensation.

35 (h) The total cost of health insurance for the employee and the cost  
36 paid by the employer.

37 (i) If the employee had been previously employed, the last date of  
38 previous employment.

39 2. Report and certify to the department of commerce the following  
40 information, and provide supporting documentation, on a form and in a manner  
41 approved by the department of commerce and, as specified in subsection C of  
42 this section, for each year in which the taxpayer earned and claimed or used  
43 credits or is carrying forward amounts from previously earned and claimed  
44 credits:

1 (a) The business name and mailing address and any other contact  
2 information requested by the department of commerce.

3 (b) The business location and the name of the zone in which the  
4 business is located.

5 (c) The average hourly wage and the total amount of compensation paid  
6 to employees qualified for the credit and for all employees at the zone  
7 location.

8 (d) The total number of qualified employment positions and the amount  
9 of income tax or premium tax credits qualified for in the tax year.

10 (e) The estimated amount of tax credits to be used in the tax year to  
11 offset tax liability.

12 (f) The estimated amount of tax credits to be available for  
13 carryforward in the tax year and the tax year in which the credits expire.

14 (g) The number of jobs and the amount of credits earned and claimed on  
15 the prior year's income tax or insurance premium tax returns.

16 (h) The amount of credits used to offset tax liabilities on the prior  
17 year's income tax or insurance premium tax return.

18 (i) The amount of credits available for carryforward as reported on  
19 the prior year's tax return and the tax year the credits expire.

20 (j) Capital investment made in the zone during the tax year and the  
21 preceding tax year.

22 (k) That each qualified employment position meets all of the following  
23 requirements:

24 (i) The position is at least one thousand seven hundred fifty hours  
25 per year of full-time permanent employment.

26 (ii) All credits that are being claimed are for wages for job duties  
27 performed primarily at the zone locations of the business.

28 (iii) The employment includes health insurance coverage for the  
29 employee for which the employer pays at least fifty per cent of the premium  
30 or membership cost. If the taxpayer is self-insured, the employer pays at  
31 least fifty per cent of a predetermined fixed cost per employee for an  
32 insurance program that is payable whether or not the employee has filed  
33 claims.

34 (iv) The employer pays compensation at least equal to the wage offer  
35 by county as computed annually by the department of economic security  
36 research administration division.

37 (l) That the only retail sales activities engaged in at the zone  
38 location were as specified in subsection A of this section.

39 (m) Other information necessary for the management and reporting of  
40 the incentives under this section.

41 3. For any year in which the taxpayer is claiming first year credits,  
42 report and certify the following additional information and provide  
43 supporting documentation to the department of commerce on a form and in a  
44 manner approved by the department, and as specified in subsection C of this  
45 section:

(a) That thirty-five per cent of the employees with respect to whom a credit is claimed for the first year of employment resided on the date of employment in an enterprise zone that is located in the same county in which the business is located.

(b) That the increase in the number of qualified employment positions for which credit is sought is the least of:

(i) The total number of filled qualified employment positions created at the zone location during the tax year.

(ii) The difference between the average number of full-time employees at a zone location in the current tax year and the average number of full-time employees during the immediately preceding tax year.

(iii) Two hundred qualified employment positions per taxpayer each year.

(c) That all employees filling a qualified employment position were employed for at least ninety days during the first taxable year.

(d) That none of the employees filling qualified employment positions were employed by the taxpayer **IN THIS STATE** during the twelve months before the current ~~date of hire~~ **EMPLOYMENT AT THE ZONE LOCATION**.

(e) That all employees for whom second and third year credits are claimed are in qualified employment positions for which first year credits were allowed and claimed by the taxpayer on the original first and second year tax returns. For the purposes of this subsection, the requirement to claim the credit on the original tax return does not apply to qualified employment positions created before January 1, 2002 and certified to the department of commerce.

(f) That all employees for whom credits are taken performed their job duties primarily at the zone locations of the business.

C. To qualify for first year credits, the report and certification prescribed by subsection B, paragraphs 2 and 3 of this section must be filed with the department of commerce by the earlier of six months after the end of the tax year in which the qualified employment positions were created or by the date the tax return is filed for the tax year in which the qualified employment positions were created. To qualify for second year credits, the report and certification prescribed by subsection B, paragraph 2 of this section must be filed with the department of commerce by the earlier of six months after the end of the taxable year or the date the tax return is filed for the tax year in which the second year credits are allowable. To qualify for third year credits, the report and certification prescribed by subsection B, paragraph 2 of this section must be filed with the department of commerce by the earlier of six months after the end of the tax year or the date the tax return is filed for the tax year in which the third year credits are allowable.

D. Any information submitted to the department of commerce under subsection B, paragraph 2, subdivisions (e) through (i) of this section is

1 exempt from the provisions of title 39, chapter 1, article 2 and considered  
2 to be confidential and is not subject to disclosure except:

3 1. To the extent that the person or organization that provided the  
4 information consents to the disclosure.

5 2. To the department of revenue for use in tax administration.

6 E. Real and personal property within an enterprise zone which is owned  
7 or used by a small manufacturing business that is certified by the department  
8 pursuant to section 41-1525.01 before July 1, 2011 shall be assessed as class  
9 six property as provided by section 42-12006.

10 F. Documents filed with the department of commerce, the department of  
11 insurance and the department of revenue under subsection B of this section  
12 shall contain either a sworn statement or certification, signed by an officer  
13 of the company under penalty of perjury, that the information contained is  
14 true and correct according to the best belief and knowledge of the person  
15 submitting the information after a reasonable investigation of the facts. If  
16 the document contains information that is materially false, the taxpayer is  
17 ineligible for the tax incentives under subsection A of this section and is  
18 subject to recovery of the amount of tax incentives allowed in preceding  
19 taxable years based on the false information, plus penalties and interest.

20 G. The department of commerce may make site visits to a taxpayer's  
21 facilities if it is necessary to further document or clarify reported  
22 information. The taxpayer must freely provide the access.

23 H. The department by rule may prescribe additional reporting  
24 requirements for taxpayers who claim tax benefits pursuant to this section.

25 I. For the purposes of this section:

26 1. "Assigned to retail" means working more than twenty-five per cent  
27 of an employee's time in one or more retail sales activities.

28 2. "Retail sales" means the sale of tangible personal property to an  
29 ultimate consumer.

30 3. "Retail sales activities" means all activities persons operating a  
31 retail business normally engage in, including taking orders, filling orders,  
32 billing orders, receiving and processing payment and shipping, stocking and  
33 delivering tangible personal property to the ultimate consumer, except drop  
34 shipments by a company acting on behalf of an unrelated company that has made  
35 a sale to a final consumer.

36 4. "Zone location" means a single parcel or contiguous parcels of  
37 owned or leased land, the structures and personal property contained on the  
38 land or any part of the structures occupied by a taxpayer.

39 Sec. 2. Section 43-1074, Arizona Revised Statutes, is amended to read:

40 43-1074. Credit for increased employment in enterprise zones;  
41 definitions

42 A. A credit is allowed against the taxes imposed by this title for net  
43 increases in qualified employment positions of residents of this state by a  
44 business located in an enterprise zone established under title 41, chapter  
45 10, article 2, except employment positions at a zone location where more than

ten per cent of the business conducted at the location consists of retail sales of tangible personal property, measured by either the number of employees assigned to retail sales or the square footage of the facility used for retail sales activities at the location in the zone. Retail sales and retail sales activities do not include:

1. Food and beverage for consumption on the premises solely by employees and occasional guests of employees at the location.

2. Promotional products not available for sale and displaying the company logo or trademark.

3. Products sold to company employees.

B. Subject to subsection E of this section, the amount of the credit is equal to:

1. One-fourth of the taxable wages paid to an employee in a qualified employment position, not to exceed five hundred dollars, in the first year or partial year of employment **IN THIS STATE**.

2. One-third of the taxable wages paid to an employee in a qualified employment position, not to exceed one thousand dollars per qualified employment position, in the second year of continuous employment.

3. One-half of the taxable wages paid to an employee in a qualified employment position, not to exceed one thousand five hundred dollars per qualified employment position, in the third year of continuous employment.

C. To qualify for a credit under this section:

1. All of the employees with respect to whom a credit is claimed must reside in this state.

2. Thirty-five per cent of the employees with respect to whom a credit is claimed for the first year of employment must reside on the date of employment in an enterprise zone that is located in the same county in which the business is located. If an employee for whom a credit was allowed in the first year of employment leaves employment during the second or third year, the taxpayer may substitute another employee who meets the requirements of paragraph 3 of this subsection and who was hired during the same year as the original employee. If the original employee was counted toward the residency requirement under this paragraph, the substitute employee must also have resided in a zone at the time the substitute was hired.

3. A qualified employment position must meet all of the following requirements:

(a) The position must be a minimum of one thousand seven hundred fifty hours per year of full-time and permanent employment.

(b) The job duties must be performed primarily at the zone locations of the business. If an eligible employee in a qualified employment position is transferred or assigned to work in the taxpayer's workplace at a different location that is also located in an enterprise zone and qualifies as a zone location, it may be considered to be continuous employment if it continues to meet all qualified employment position requirements.

1 (c) The employment must include health insurance coverage for the  
2 employee for which the employer pays at least fifty per cent of the premium  
3 or membership cost. If the taxpayer is self-insured, the taxpayer must pay  
4 at least fifty per cent of a predetermined fixed cost per employee for an  
5 insurance program that is payable whether or not the employee has filed  
6 claims.

7 (d) The employer must pay compensation at least equal to the wage  
8 offer by county as computed annually by the department of economic security  
9 research administration division.

10 (e) The employee must have been employed for at least ninety days  
11 during the first taxable year. An employee who is hired during the last  
12 ninety days of the taxable year shall be considered a new employee during the  
13 next taxable year. A qualified employment position that is filled during the  
14 last ninety days of the taxable year is considered to be a new qualified  
15 employment position for the next taxable year.

16 (f) The employee must not have been previously employed by the  
17 taxpayer **IN THIS STATE** within twelve months before the current ~~date of hire~~  
18 **EMPLOYMENT AT THE ZONE LOCATION**.

19 D. A credit is allowed for employment in the second and third year  
20 only for qualified employment positions for which a credit was allowed and  
21 claimed by the taxpayer on the original first and second year tax  
22 returns. For the purposes of this subsection, the requirement to claim the  
23 credit on the original tax return does not apply to qualified employment  
24 positions created before January 1, 2002 and ~~were~~ certified to the department  
25 of commerce.

26 E. The net increase in the number of qualified employment positions is  
27 the lesser of the total number of filled qualified employment positions  
28 created in the zone during the tax year or the difference between the average  
29 number of full-time employees in the zone in the current tax year and the  
30 average number of full-time employees during the immediately preceding  
31 taxable year. The net increase in the number of qualified employment  
32 positions computed under this subsection shall not exceed two hundred  
33 qualified employment positions per taxpayer each year.

34 F. A taxpayer who claims a credit under section 43-1077 or 43-1079  
35 shall not claim a credit under this section with respect to the same  
36 employees.

37 G. If the allowable tax credit exceeds the income taxes otherwise due  
38 on the claimant's income, or if there are no state income taxes due on the  
39 claimant's income, the amount of the claim not used as an offset against  
40 income taxes may be carried forward as a tax credit against subsequent  
41 taxable years' income tax liability, not to exceed five taxable years,  
42 provided the business remains in an enterprise zone.

43 H. Co-owners of a business, including partners in a partnership and  
44 shareholders of an S corporation, as defined in section 1361 of the internal  
45 revenue code, may each claim only the pro rata share of the credit allowed

1 under this section based on the ownership interest. The total of the credits  
2 allowed all such owners of the business may not exceed the amount that would  
3 have been allowed for a sole owner of the business.

4 I. If a person purchases a business in a zone or changes ownership  
5 through reorganization, stock purchase or merger, the new taxpayer may claim  
6 first year credits only for one or more qualified employment positions that  
7 it created and filled with an eligible employee after the purchase or  
8 reorganization was complete. If a person purchases a taxpayer that had  
9 qualified for first or second year credits or changes ownership through  
10 reorganization, stock purchase or merger, the new taxpayer may claim the  
11 second or third year credits if it meets other eligibility requirements of  
12 this section. Credits for which a taxpayer qualified before the changes  
13 described in this subsection are terminated and lost at the time the changes  
14 are implemented.

15 J. A failure to timely report and certify to the department of  
16 commerce and the department of revenue the information prescribed by section  
17 41-1525, subsection B, paragraphs 1, 2 and 3 and in the manner prescribed by  
18 section 41-1525, subsection C, disqualifies the taxpayer from the credit  
19 under this section. The department of revenue shall require written evidence  
20 of the timely report to the department of commerce.

21 K. The termination of an enterprise zone does not affect the credit  
22 under this section with respect to:

23 1. Taxpayers who have employees in the second and third years of  
24 employment in qualified employment positions under subsections A, B and C of  
25 this section if the business remains in the location that was in the  
26 enterprise zone.

27 2. Amounts carried forward into subsequent taxable years under  
28 subsection G of this section.

29 L. The department may adopt rules necessary for the administration of  
30 this section.

31 M. For the purposes of this section:

32 1. "Assigned to retail" means working more than twenty-five per cent  
33 of an employee's time in one or more retail sales activities.

34 2. "Retail sales" means the sale of tangible personal property to an  
35 ultimate consumer.

36 3. "Retail sales activities" means all activities persons operating a  
37 retail business normally engage in, including taking orders, filling orders,  
38 billing orders, receiving and processing payment and shipping, stocking and  
39 delivering tangible personal property to the ultimate consumer, except drop  
40 shipments by a company acting on behalf of an unrelated company that has made  
41 a sale to a final consumer.

42 4. "Zone location" means a single parcel or contiguous parcels of  
43 owned or leased land, the structures and personal property contained on the  
44 land or any part of the structures occupied by a taxpayer.



1           Sec. 3. Section 43-1161, Arizona Revised Statutes, is amended to read:

2           43-1161. Credit for increased employment in enterprise zones:  
3                               definitions

4           A. A credit is allowed against the taxes imposed by this title for net  
5 increases in qualified employment positions of residents of this state by a  
6 business located in an enterprise zone established under title 41, chapter  
7 10, article 2, except employment positions at a zone location where more than  
8 ten per cent of the business conducted at the location consists of retail  
9 sales of tangible personal property, measured by either the number of  
10 employees assigned to retail sales or the square footage of the facility used  
11 for retail sales activities at the location in the zone. Retail sales and  
12 retail sales activities do not include:

13           1. Food and beverage for consumption on the premises solely by  
14 employees and occasional guests of employees at the location.

15           2. Promotional products not available for sale and displaying the  
16 company logo or trademark.

17           3. Products sold to company employees.

18           B. Subject to subsection E of this section, the amount of the credit  
19 is equal to:

20           1. One-fourth of the taxable wages paid to an employee in a qualified  
21 employment position, not to exceed five hundred dollars, in the first year or  
22 partial year of employment IN THIS STATE.

23           2. One-third of the taxable wages paid to an employee in a qualified  
24 employment position, not to exceed one thousand dollars per qualified  
25 employment position, in the second year of continuous employment.

26           3. One-half of the taxable wages paid to an employee in a qualified  
27 employment position, not to exceed one thousand five hundred dollars per  
28 qualified employment position, in the third year of continuous employment.

29           C. To qualify for a credit under this section:

30           1. All of the employees with respect to whom a credit is claimed must  
31 reside in this state.

32           2. Thirty-five per cent of the employees with respect to whom a credit  
33 is claimed for the first year of employment must reside on the date of hire  
34 in an enterprise zone that is located in the same county in which the  
35 business is located. If an employee for whom a credit was allowed in the  
36 first year of employment leaves employment during the second or third year,  
37 the taxpayer may substitute another employee who meets the requirements of  
38 paragraph 3 of this subsection and who was hired during the same year as the  
39 original employee. If the original employee was counted toward the residency  
40 requirement under this paragraph, the substitute employee must also have  
41 resided in a zone at the time the substitute was hired.

42           3. A qualified employment position must meet all of the following  
43 requirements:

44           (a) The position must be a minimum of one thousand seven hundred fifty  
45 hours per year of full-time and permanent employment.

1 (b) The job duties must be performed primarily at the zone locations  
2 of the business. If an eligible employee in a qualified employment position  
3 is transferred or assigned to work in the taxpayer's workplace at a different  
4 location that is also located in an enterprise zone and qualifies as a zone  
5 location, it may be considered to be continuous employment if it continues to  
6 meet all qualified employment position requirements.

7 (c) The employment must include health insurance coverage for the  
8 employee for which the employer pays at least fifty per cent of the premium  
9 or membership cost. If the taxpayer is self-insured, the taxpayer must pay  
10 at least fifty per cent of a predetermined fixed cost per employee for an  
11 insurance program that is payable whether or not the employee has filed  
12 claims.

13 (d) The employer must pay compensation at least equal to the wage  
14 offer by county as computed annually by the department of economic security  
15 research administration division.

16 (e) The employee must have been employed for at least ninety days  
17 during the first taxable year. An employee who is hired during the last  
18 ninety days of the taxable year shall be considered a new employee during the  
19 next taxable year. A qualified employment position that is filled during the  
20 last ninety days of the taxable year is considered to be a new qualified  
21 employment position for the next taxable year.

22 (f) The employee must not have been previously employed **IN THIS STATE**  
23 by the taxpayer within twelve months before the current ~~date of hire~~  
24 **EMPLOYMENT AT THE ZONE LOCATION**.

25 D. A credit is allowed for employment in the second and third year  
26 only for qualified employment positions for which a credit was allowed and  
27 claimed by the taxpayer on the original first and second year tax returns.  
28 For the purposes of this subsection, the requirement to claim the credit on  
29 the original tax return does not apply to qualified employment positions  
30 created before January 1, 2002 and ~~were~~ certified to the department of  
31 commerce.

32 E. The net increase in the number of qualified employment positions is  
33 the lesser of the total number of filled qualified employment positions  
34 created in the zone during the tax year or the difference between the average  
35 number of full-time employees in the zone in the current tax year and the  
36 average number of full-time employees during the immediately preceding  
37 taxable year. The net increase in the number of qualified employment  
38 positions computed under this subsection may not exceed two hundred qualified  
39 employment positions per taxpayer each year.

40 F. A taxpayer who claims a credit under section 43-1165 or 43-1167 may  
41 not claim a credit under this section with respect to the same employees.

42 G. If the allowable tax credit exceeds the income taxes otherwise due  
43 on the claimant's income, or if there are no state income taxes due on the  
44 claimant's income, the amount of the claim not used as an offset against  
45 income taxes may be carried forward as a tax credit against subsequent years'

1 income tax liability for the period, not to exceed five taxable years,  
2 provided the business remains in an enterprise zone.

3 H. Co-owners of a business, including partners in a partnership, may  
4 each claim only the pro rata share of the credit allowed under this section  
5 based on the ownership interest. The total of the credits allowed all such  
6 owners of the business may not exceed the amount that would have been allowed  
7 for a sole owner of the business.

8 I. If a person purchases a business in a zone or changes ownership  
9 through reorganization, stock purchase or merger, the new taxpayer may claim  
10 first year credits only for one or more qualified employment positions that  
11 it created and filled with an eligible employee after the purchase or  
12 reorganization was complete. If a person purchases a taxpayer that had  
13 qualified for first or second year credits or changes ownership through  
14 reorganization, stock purchase or merger, the new taxpayer may claim the  
15 second or third year credits if it meets other eligibility requirements of  
16 this section. Credits for which a taxpayer qualified before the changes  
17 described in this subsection are terminated and lost at the time the changes  
18 are implemented.

19 J. A failure to timely report and certify to the department of  
20 commerce and the department of revenue the information prescribed by section  
21 41-1525, subsection B, paragraphs 1, 2 and 3 and in the manner prescribed by  
22 section 41-1525, subsection C, disqualifies the taxpayer from the credit  
23 under this section. The department of revenue shall require written evidence  
24 of the timely report to the department of commerce.

25 K. The termination of an enterprise zone does not affect the credit  
26 under this section with respect to:

27 1. Taxpayers that have employees in the second and third years of  
28 employment in qualified employment positions under subsections A, B and C of  
29 this section if the business remains in the location that was in the  
30 enterprise zone.

31 2. Amounts carried forward into subsequent taxable years under  
32 subsection G of this section.

33 L. The department may adopt rules necessary for the administration of  
34 this section.

35 M. For the purposes of this section:

36 1. "Assigned to retail" means working more than twenty-five per cent  
37 of an employee's time in one or more retail sales activities.

38 2. "Retail sales" means the sale of tangible personal property to an  
39 ultimate consumer.

40 3. "Retail sales activities" means all activities persons operating a  
41 retail business normally engage in, including taking orders, filling orders,  
42 billing orders, receiving and processing payment and shipping, stocking and  
43 delivering tangible personal property to the ultimate consumer, except drop  
44 shipments by a company acting on behalf of an unrelated company that has made  
45 a sale to a final consumer.

1           4. "Zone location" means a single parcel or contiguous parcels of  
2 owned or leased land, the structures and personal property contained on the  
3 land or any part of the structures occupied by a taxpayer.

4           Sec. 4. Retroactivity; amended returns; refunds

5           A. This act applies retroactively to taxable years beginning from and  
6 after December 31, 2005.

7           B. For the purposes of this section, and notwithstanding section  
8 41-1525, subsection C, Arizona Revised Statutes, a taxpayer may file amended  
9 reports and certifications under section 41-1525, subsection B, Arizona  
10 Revised Statutes, to the department of commerce and file amended income tax  
11 returns to the department of revenue within sixty days after the effective  
12 date of this act.

13           C. The requirement to claim the credit on an original return under  
14 section 41-1525, subsection B, paragraph 3, subdivision (e), Arizona Revised  
15 Statutes, section 43-1074, subsection D, Arizona Revised Statutes, and  
16 section 43-1161, subsection D, Arizona Revised Statutes, does not apply to  
17 amended returns filed under this section.